

Number: **201424017**
Release Date: 6/13/2014
Index Number: 856.00-00

Date:
March 12, 2014

Taxpayer =
State A =
Date 1 =
Property(ies) =
Crops =
Plant(s) =
a =
b =
c =
d =
e =
f =
g =

This is in reply to a letter dated September 27, 2013 requesting a ruling on behalf of Taxpayer that the Commercial Plants (as defined below) are real property for purposes of section 856 of the Internal Revenue Code.

Taxpayer is a State A corporation that intends to elect to be taxed as a real estate investment trust (“REIT”) for its tax year that ended Date 1. Taxpayer owns Properties that it leases on a triple-net lease basis to unrelated tenants. The unrelated tenants use the Properties for the production of Crops that the tenants harvest.

Taxpayer, through a wholly-owned indirect subsidiary, purchased a Plant Property (“Property A”). Property A has approximately e Plants substantially all of which are mature and expected to produce a commercially harvestable crop (the “Commercial Plants”). The Commercial Plants have complex root systems that are typically b to c feet wide and a feet deep.

Law & Analysis:

Section 856(c)(4)(A) provides that at least 75 percent of a REIT’s total assets must be, among other sources, “real estate assets.”

Sections 856(c)(5)(B) provides that the term “real estate assets” means real property, including “interests in real property.”

Section 856(c)(5)(C) provides that the term “interests in real property” includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon, but does not include mineral, oil, or gas royalty interests.

Section 1.856-3(d) provides that the term “real property” means land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items that are structural components of those buildings or structures). In addition, real property includes interests in real property. Local law definitions do not control for purposes of determining the meaning of the term real property as used in section 856 and the regulations thereunder. The term includes, for example, the wiring of a building, plumbing systems, central heating or central air-conditioning machinery, pipes or ducts, elevators or escalators installed in the building, or other items that are structural components of a building or other permanent structure. The term does not include assets accessory to the operation of a business, such as machinery, printing press, transportation equipment that is not a structural component of the building, office equipment, refrigerators, individual air-conditioning units, grocery counters, furnishings of a motel, hotel, or office building, etc., even though those items may be termed fixtures under local law.

Other sections of the Code and regulations are also instructive in defining “real property.” For example, section 897(c) and section 1.897-1(b)(2) define real property to include land and unsevered natural products of land, including growing crops and plants. See also section 1.263A-8(c)(1).

It is well established by the courts that standing timber is treated as real property. Hutchins v. King, 68 U.S. 53, 59; 17 L. Ed. 544 (1863). In addition, courts have held that the trees and shrubbery growing on the land are part and parcel of the land. See Adjes v. Commissioner 74 T.C. 1005 (1980).

Rev. Rul. 67-51, 1967-1 C.B. 68 holds that trees of a fruit orchard or grove are not tangible personal property within the meaning of former section 179. The revenue ruling states that it is “well settled that trees are part and parcel of the land” and “such trees of a fruit orchard . . . are in the nature of land.”

The Commercial Plants are plants with large and complex root systems, and each Commercial Plant has an expected life of f to g years. As natural products of the land that are attached to the land, the Commercial Plants constitute “real property.” Therefore, the Commercial Plants, until severed from Property A, are real property within the meaning of section 856.

No opinion is expressed or implied as to the federal tax consequences of this transaction under any provision not specifically addressed herein. Specifically, no opinion is expressed or implied concerning whether Taxpayer otherwise qualifies as a REIT under subchapter M, part II of Chapter 1 of the Code. Furthermore, no opinion is expressed or implied concerning whether the rent from Property A constitutes “rents from real property” for purposes of section 856.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Jonathan D. Silver

Jonathan D. Silver

Assistant to the Branch Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)